THE UNIVERSITY OF IOWA

College of Law
Professor Katherine Porter
431 Boyd Law Building
Iowa City, Iowa 52242-1113
319-335-7490
Fax 319-335-9098

CREDIT CARD RISKS FOR OLDER AMERICANS

Written Testimony
of

Katherine Porter
Associate Professor of Law
University of Iowa College of Law

Before the
United States House of Representatives
Subcommittee on Financial Institutions
and Consumer Credit

Hearing on
Credit Cards and Older Americans

August 7, 2007

Witness Background

I am an Associate Professor of Law at the University of Iowa College of Law. I joined the faculty in 2005.[1] I received my J.D. degree *magna cum laude* from Harvard Law School and my B.A. degree *cum laude* from Yale College. I teach bankruptcy, commercial law, and consumer law and have published empirical research on consumer bankruptcy in several respected journals, including the Cornell Law Review, the Wisconsin Law Review and the American Bankruptcy Law Journal.[2] My most recent article explores how lenders, including credit card issuers, repeatedly target recently bankrupt families with new offers of credit. I served as Project Director of the 2001 Consumer Bankruptcy Project and am one of the principal investigators in the ongoing 2007 Consumer Bankruptcy Project. Also, I am a co-investigator in the Mortgage Project, a national empirical study of mortgage claims in consumer bankruptcy cases. I have not received any federal grants or contracts relevant to this testimony.

Introduction

Older Americans face many hurdles to financial security—fixed incomes, rising health care costs, loss of income from the death of a spouse or partner, and even fraudulent scams aimed specifically at elderly people. Credit cards pose an additional threat to the well-being of this generation. Today, older Americans carry more credit card debt than they did in prior years, are the fastest growing age cohort of bankruptcy debtors, and are particularly hard hit by the penalty charges and fees that are prevalent in the credit card market.

My testimony has two parts. First, I present the scholarly research on how older Americans use credit cards and how credit cards affect their financial well-being. Second, I suggest three areas for policy attention, identifying how federal law could better shield older Americans from the risks of credit cards.

<u>Part I</u>
Empirical Data on Older Americans and Credit Cards

A handful of studies have examined the credit card practices of older Americans or the effect of credit card debt on the financial situations on senior households. The research suggests that many older Americans face challenges in managing and controlling credit card debt.

Credit Card Use by Older Americans

Older Americans use a wide variety of financial products, including credit cards. Although some have suggested that young people are the "plastic generation," and attempted to pin rising credit card use on generational preferences,[3] the data show otherwise. Most older Americans have credit cards. Using data from the Federal Reserve Board's Survey of Consumer Finance, the Demos study, *Retiring in the Red*, concluded that about seven in ten Americans aged 65 and older have a credit card.[4] This number has remained relatively steady since 1992.[5]

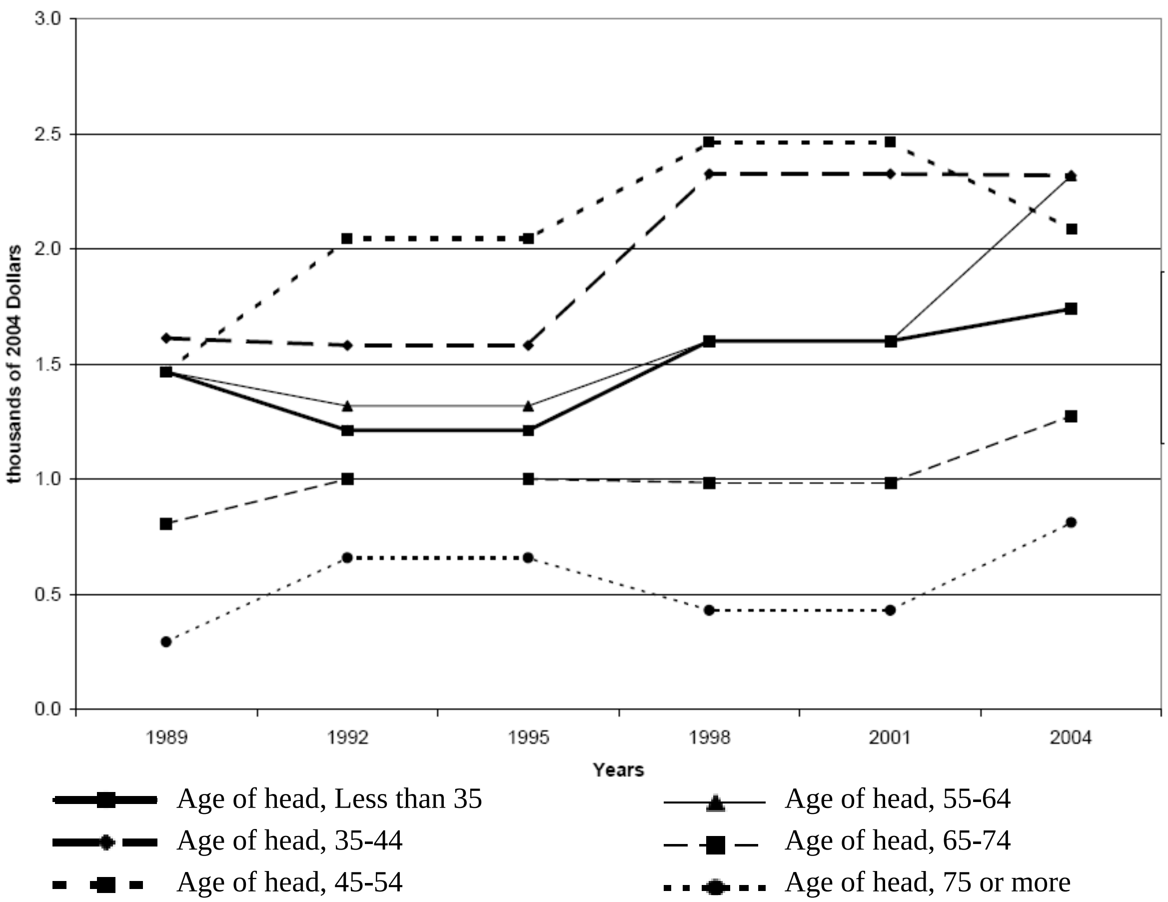
However, the credit card debts of older Americans seem to be increasing, particularly among those transitioning to retirement age. Demos researchers found that among Americans 65 years and older who have at least one credit card, about 3 in 10 seniors admitted to carrying a balance on their credit cards.[6] The most current time-series data from the Survey of Consumer Finance confirm that about 30 percent of senior households that have credit cards carry credit card balances. While older Americans are less likely to have credit card balances than younger Americans, the percentage of households headed by baby boomers near retirement age (55-64 years old) with credit card balances has increased.[7] As this cohort ages, the proportion of Americans age 65 years or older with credit card balances may correspondingly grow.

While the popularity of credit cards among older Americans has been relatively constant, the amount of credit card balances has increased. Between 1998 and 2001, the average credit card debt among households headed by a person aged 65-69 steadily climbed.[8] Evidence from the current Survey of Consumer Finances reinforces that the credit card debts of older Americans continue to grow. The data reveal noticeable increases in both the average and median amounts of credit balances among the three oldest age cohorts. Among those who have credit cards, families with heads of households who are aged 55-64 years have, on average, the largest credit card balances of all age demographics.[9] Households in this near-retirement age group reported an average credit card balance of nearly $6,000.

Figure 1 shows the changes over time in the median amount of credit card balances for different age groups. Older American households had steep jumps in credit card balances in 2004. This increase consistently appeared among all three of the older cohorts: households headed by an individual aged 55-64, 65-74, or 75 or older. These increases outpaced the younger demographic groups, in which the typical household had no increase in credit card balances between 2001 and 2004.[10] Credit card balances among older Americans are trending upward.

Figure 1

Median value of credit card balances for families with holdings, by age of head



Source: 2004 Survey of Consumer Finance Chartbook

While older Americans are less likely to have credit card debt than younger Americans, the data show that the credit card balances of seniors have climbed. This pattern of increasing credit card debts is alarming. Such debt exposes older American families to greater risk of financial harm from credit card penalty tactics and greater risk of bankruptcy.

Older American's Credit Card Practices

Even their proponents concede that credit cards are extremely complex products.[11] This complexity presents particular challenges for older Americans. A new research paper from the Massachusetts Institute of Technology economics department shows that older Americans borrow at higher interest rates and pay more fees than middle-aged adults, even when researchers controlled for all observable characteristics, including risk factors such as credit scores and income levels.[12] Using a representative random sample of 128,000 credit card accounts, the researchers found that older Americans are more likely to pay three types of credit card fees: late fees, overlimit fees, and cash advance fees.[13] They term the payment of these fees "mistakes" because many consumers would and could alter their behavior to avoid these expensive fees if they were aware of the impending charges. Older Americans pay a disproportionate share of the fees and penalties imposed by credit card issuers.

The researchers also analyzed whether age correlated with how consumers handled transfers of account balances to new cards. They measured the likelihood that consumers of different ages would avoid what they call the "catch" of balance transfers—purchases on the new card have very high interest rates and subsequent payments on the new card go *first* to paying down the low interest transferred balances. Analyzing a national dataset of 14,798 consumer accounts that showed balance transfers, the authors found a pronounced U-shape effect of suboptimal balance transfer behavior based on age. Older and younger Americans were less likely to adopt the optimal strategy of transferring a balance and not making any new charges during the introductory period.[14] In fact, people in their seventies fared worse than 18 year olds—the usual minimum age for a credit card contract.[15] This age effect persisted even though researchers controlled for factors such as education, income and credit-worthiness in the analysis.

Older Americans are more likely to pay credit card fees and fall into the pricing traps of credit card companies. In effect, older Americans are at heightened risk for suffering a financial penalty from credit card use. Increases in fees or penalty charges fall more sharply on the senior population. The financial impact of credit card mistakes is particularly harsh for older Americans, who not only incur such fees more frequently, but are who are more likely to live on a fixed income that cannot absorb extra costs such as the default interest rate that accompanies a penalty charge.

Older Americans in Bankruptcy

Bankruptcy is a public admission of severe financial distress. Studying the bankrupt population is a useful lens for understanding the pressures that push families to financial collapse. However, many more families struggle to make ends meet and suffer serious privations than actually file bankruptcy. Examining the bankrupt population is like looking at the tip of an iceberg: It's the easiest way to see the phenomenon but seriously underestimates the complete reality of it.

Consumer Bankruptcy Project[16] data offer the most complete age-based findings on the bankrupt population.[17] Dr. Teresa Sullivan, Dr. Deborah Thorne, and Professor Elizabeth Warren analyzed changes in the age demographics of bankruptcy filers. Overall, they concluded that bankruptcy is a middle-age experience.[18] However, they found a definite, sharp increase in the rate of bankruptcy among older Americans. Between 1991 and 2001, the bankruptcy filing rate of Americans age 65 and older increased by 213 percent, a doubling of the prevalence of bankruptcy among older Americans.[19] People age 65 and older were the fastest-growing age demographic in bankruptcy.[20]

The increase in the bankruptcy rate among older Americans is troubling because it may signal a decline in the ability of senior households to avoid severe financial problems. The trend of bankruptcy as a middle-age phenomenon may wane in the future, as the largest single group of debtors has aged significantly during successive Consumer Bankruptcy Project studies.[21] The ongoing 2007 Consumer Bankruptcy Project is collecting data that will reveal whether the bankruptcy rate among older Americans has continued to escalate and how the 2005 bankruptcy reforms may have harmed older Americans.[22]

A study using data collected by the Executive Office of the U.S. Trustee estimated that 4.4 percent of the total bankruptcy debtor population who filed Chapter 7 between 1998 and 2000 were 70 years or older.[23] In 2001, the Consumer Bankruptcy Project data showed that approximately 5 percent of the bankrupt population was 65 years or older.[24] Both studies conclude that older Americans were underrepresented among bankruptcy filers based on their share of the total population. However, the absolute number of older Americans who file bankruptcy will very likely climb in future years as the baby boom generation ages. Thus, the proportion of all bankruptcy debtors who are seniors will probably grow. Additionally, rising credit card use may erode the historic resilience of older Americans to financial distress and drive up the bankruptcy rate among seniors.

Older Americans in bankruptcy have one major distinguishing characteristic from the typical bankruptcy filer—very high credit card debts.[25] The most detailed study to date found that people age 70 or older who filed bankruptcy had much larger credit card debts than other bankruptcy debtors. The average elderly debtor owed $38,187 in bank credit card debt, and $3,812 in retail store credit card debt. At the median, elderly bankruptcy debtors owed more than double the amount of bank credit card debt and store credit card debt of the typical bankruptcy debtor.[26] The table below reproduces those findings:

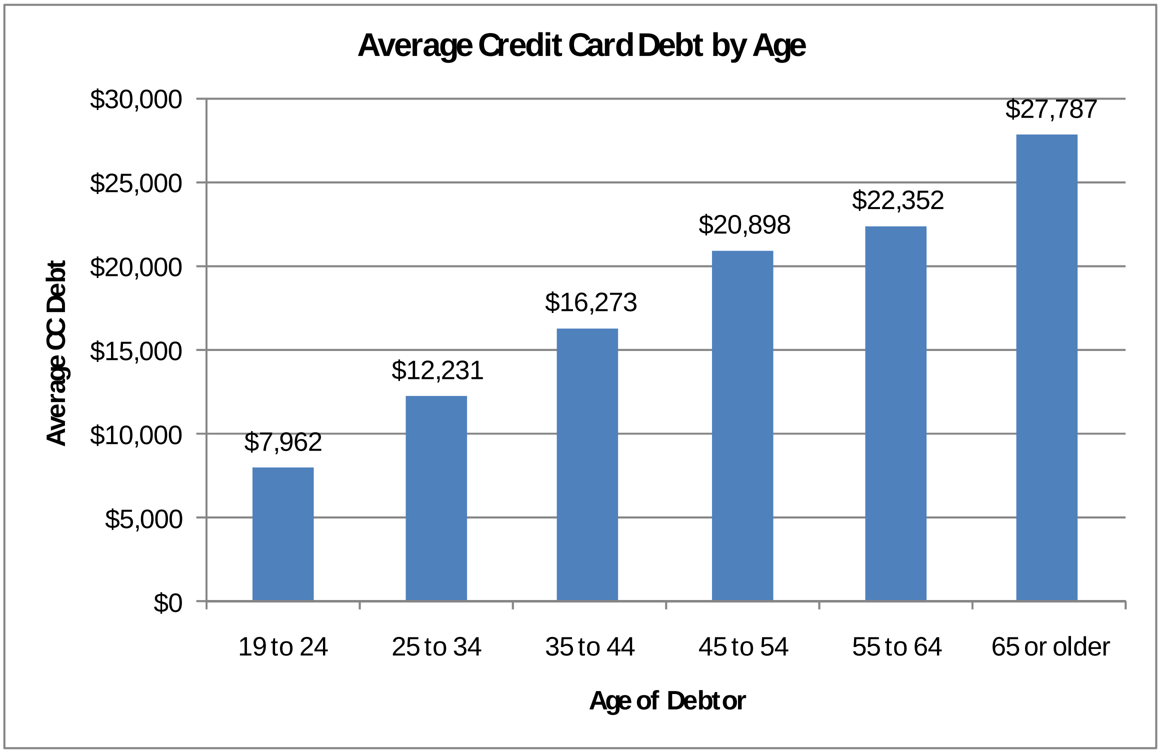
Credit Card Debts of Bankruptcy Debtors

	Average Bank Credit Card Debt	Average Store Credit Card Debt	Median Bank Credit Card Debt	Median Store Credit Card Debt
Elderly	38,187	3,812	24,360	2,233
All Debtors	17,891	2,392	10,587	1,035

Source: A Closer Look at Elderly Chapter 7 Debtors

In another study, researchers found that credit card debt consistently escalated with the age of the bankruptcy filers.[27] Figure 2, below, illustrates that relationship:

Figure 2



Source: Credit Card Debt in Chapter 7 Cases

Debtors age 65 or older had, on average, nearly four times as much credit card debt as debtors under the age of 25. These data on the financial characteristics of bankruptcy filers highlight the particular vulnerability of older Americans to unmanageable credit card debt.

High credit card debt can overwhelm the limited incomes of older Americans. The credit card debts of elder Americans in bankruptcy are particularly grim when compared to these debtors' low incomes. Bankruptcy debtors who were 70 years or older owed, on average, more than double their annual income in credit card debt.[28] This means that even if the average older American could somehow manage to halt all accruing credit card interest, fees, and penalty charges, incur no more debts, and eliminate all living expenses, that senior would still have to devote more than two entire years of income solely to credit card issuers to pay off their credit card obligations. Bankruptcy is a last resort option for older Americans with such credit card debts, and the recent increases in bankruptcy filing fees and attorneys' fees[29] may present serious obstacles to bankruptcy relief for older Americans who struggle to make ends meet on low incomes.[30]

The stories of the older Americans from the 2001 Consumer Bankruptcy Project reveal some of the reasons for the escalating bankruptcy rate and particularly high credit card debts of older Americans. Many families suffer financial shocks due to changes in family structure such as those caused by divorce.[31] With older Americans, a spouse's death is another type of family dissolution that can lead to financial problems. Some seniors are not prepared or able to manage credit cards without the help of their spouse or life partner. A 64-year woman from California explained that she had learned the hard way that she could not handle her finances on her own. When this woman was married, her husband always took care of all financial responsibilities. After her husband passed away, she lived with her son, and he helped her make financial decisions. When the son married, this woman was left alone. While trying to look after herself, her debt spiraled out of control, leading to her bankruptcy filing.[32] This woman's experience illustrates how increasing isolation from family can expose seniors to the risk of overwhelming credit card debt.

Other older Americans experience a different sort of family-related financial problem. A vast majority of older Americans are parents and often grandparents. In some cases, retirement-age households may be trying to provide financial support for both their elderly parents and their college-age or young adult children. Despite their advancing years and the financial constraints of retirement, these seniors' sense of familial duty may not abate. Several older Americans in the Consumer Bankruptcy Project described serious financial problems that stemmed from trying to help family members. A 79 year old retired postal carrier said that his financial problems started when he used credit cards to pay his elderly mother's medical and regular expenses before her death. During that same period, his own health began to deteriorate and he faced a growing pile of medical debts for his own care.[33] A 72 year old woman told us that despite having good credit all her life, she wound up filing bankruptcy because of her son's financial problems. After her son divorced, he could no longer afford to contribute to her living expenses. The situation worsened when she allowed her son to use her credit cards to deal with his post-divorce financial problems. He maxed out her cards, and neither she nor her son could repay the obligations. This senior confessed that she was "very embarrassed" to have filed bankruptcy, but said that she had just grown exhausted with being "hounded and hounded and hounded by bill collectors."[34]

The interest rate adjustments and penalty provisions imposed by credit card companies pose particular challenges for older Americans in financial distress. Current law permits card issuers to apply the new rate to existing balances, even though consumers incurred those charges under a prior rate. When credit card companies hike interest rates or apply the default rate to the account, consumers suddenly need to find additional money to meet their credit card obligations. Relative to younger borrowers, seniors have fewer options to cope with escalating credit card costs. Older Americans are more likely to live on fixed incomes, have fewer job opportunities, and may be unable to work at all due to deteriorating health. These limitations on earning ability make it harder for seniors to "earn" their way out of credit card debt and to cope with the industry's retroactive price increases.

Some older Americans find themselves in bankruptcy because they did not understand the implications of credit card use. These seniors, many of whom are quite elderly, find that their cognitive abilities have slowly eroded, making it difficult or impossible for them to appreciate the complicated pricing structure of credit cards. The son of an 81 year old man who filed bankruptcy told Consumer Bankruptcy Project researchers that he now acted as power of attorney after his father's credit card debts led to bankruptcy.[35] The man said his father was diagnosed with dementia, but it took his children many months to discover the father's large credit card debts. He complained that credit card companies preyed on his father, even after he had told the companies that his father was ill, easily confused, and had a power of attorney.

With support and leadership from AARP, the new 2007 Consumer Bankruptcy Project (Phase IV of these studies) has launched a special in-depth study of older Americans in bankruptcy as part of its larger study of the consumer bankruptcy system.[36] John Pottow, a professor at the University of Michigan Law School, has a particular interest in this research and is working to analyze how credit cards contribute to older Americans' bankruptcies. This research will provide important new insights on the causes and consequences of bankruptcy for senior household and likely will yield implications for credit card policy that can help shield older Americans from financial collapse.

Existing and ongoing research suggest that credit cards are an important factor in the escalating bankruptcy rate among older Americans. These findings buttress the research showing that the amount of credit card debt carried by older Americans has increased and that older Americans are more likely to be hit with credit card fees and default penalties. Credit cards are not age-neutral in their financial effects. Older Americans are particularly vulnerable to credit card harms compared to middle-aged consumers.

Part II
Improving Older Americans Credit Card Management

Many older Americans struggle to manage credit cards successfully. The policy proposals developed below are relatively modest changes to existing law that would help older Americans avoid harmful effects of credit cards. These reforms focus on the needs of seniors but would benefit all consumers.

Reducing Credit Card Errors and Fees with Point-of-Sale Disclosure

Credit card regulation focuses on disclosures at the initial point of contracting.[37] The Truth-in-Lending Act requires card issuers to make copious written disclosures in credit card solicitations and credit card contracts.[38] The credit industry has conceded that existing disclosures should be improved,[39] and pending legislation proposes such reforms.[40] Research on the credit card habits of older Americans highlights the benefit of a fresh approach—focusing on the timing of disclosure. Drawing on the research of Professor Ronald Mann, I suggest point-of-sale disclosures as a beneficial adjunct to the initial and periodic statement disclosures that are required by existing law.

Older Americans are more likely to incur credit card penalties. Point-of-sale disclosures could reduce the number of consumers saddled with these expensive fees. At the moment of each card transaction, the credit card user could be warned that the transaction would cause them to exceed their credit limit and advise the consumer of the amount of the overlimit penalty charge.[41] Such disclosures would help consumers avoid rewarding the industry for its practice of knowingly allowing consumers to exceed their credit limit and then retroactively applying a penalty rate to the entire balance as a consequence for being over their credit limit.

At the point of sale, consumers also should be advised of their current outstanding credit card balance. Most credit card transactions are authorized online with immediate communication with the card company, and the balance could be displayed on the electronic terminal or printed on the consumer receipt. This disclosure mirrors the practice of ATM terminals of providing consumers with advice on their bank account balance when they make withdrawals. These disclosures would help consumers monitor the amount of their credit card debt throughout the billing cycle and may curb discretionary expenditures that exceed the consumer's budget. Point-of-sale disclosures could also tackle the frequency of late payments to card issuers. To aid consumers in remembering to pay on time, card issuers could be required to display or print the next payment due date at each point-of-sale moment.

Card-processing technology has improved tremendously in recent years, and the proposed disclosures could be phased in over a relatively short period of one to two years. Point-of-sale disclosures harness these technological changes and consumers' existing credit card habits to improve consumers' awareness of their financial practices and the penalties that accompany certain credit card transactions.

Encouraging the Debit Alternative

Credit cards combine spending and borrowing functions in a single financial instrument. This unique feature of credit cards has a troubling effect. In his book, Charging Ahead, Professor Ronald Mann analyzes aggregate financial data from five Western countries, including the United States. He shows how a societal preference for using credit cards as a payment device drives up total consumer debt. He finds that even when credit card debt is held constant, an increase in using credit cards to pay for transactions (as opposed to cash, checks, debit cards, etc.) drives up a country's total consumer debt. In his words, "[h]olding all else equal, an increase of $100 in per capita credit card spending is associated with an increase, one year later, in total consumer borrowing of $105."[42] Americans' preference for using credit cards as payment devices—without regard to whether consumers carry credit card balances—contributes significantly to the rising total consumer debt in this country. The consequence of using credit cards to pay for routine purchases is to leave American with fewer dollars leftover to put toward savings. In this way, credit cards ratchet up the risk that a family will not have enough savings to weather an unexpected expense or a loss of income without falling into serious financial distress or even having to resort to bankruptcy. Mann finds that increased credit card debt leads to higher bankruptcy filings, even if total debt is held constant.[43]

The policy solution to these harmful effects of credit cards is to encourage Americans to use debit cards as their primary payment device. Debit cards capture the transactional benefits of plastic payments. Indeed, they are even faster and cheaper to process than credit cards, and certainly more so than paper checks. Debit cards are safer than cash, deterring criminal activity and identify theft, both of which may be particular concerns for older Americans. Most importantly, debit cards do not appear to increase total consumer debt or bankruptcy filings. Thus, debit cards may reduce the number of families in financial distress, while also protecting consumers from the credit card industry's high-cost practices such as late fees and universal default rate changes.[44]

Yet, fewer Americans have debit cards than credit cards,[45] and debit cards are used less frequently than credit cards.[46] The discrepancy in card use is particularly sharp among older Americans. In 2004, a Federal Reserve study found that only 20 percent of consumers age 65 or older with a checking account made occasional use of a debit card.[47] The study concluded that the probability of having and using a debit card decreases steadily with age. Older Americans shy away from debit cards.

Several factors contribute to the relative disfavor of debit cards in America. One reason is differing legal protections for debit and credit cards. Current law disadvantages consumers who chose to use debit cards instead of credit cards. The Truth-in-Lending Act gives consumers in some situations the right to withhold payments to a credit card company based on the consumer's assertion that it has a defense to paying the merchant.[48] No comparable protection exists for debit cards. Particularly for Internet and telephone transactions in which the consumer cannot evaluate the merchandise or service, this protection could cause consumers to prefer paying with credit cards instead of debit cards.

Older Americans are more likely to live on fixed incomes than the general American population, and debit cards facilitate seniors keeping spending within their budgets. Congress should level the field between debit cards and credit cards so that consumers are entitled to identical consumer protections under the law, regardless of which method they use to pay. As an additional measure to encourage debit card use, financial literacy programs for senior citizens should educate older Americans about debit cards and their benefits. Advocacy groups such as AARP should offer more information on the comparative advantages of debit cards to their members, and banks should be encouraged to promote debit card products as part of their service packages that are specifically marketed to older Americans.

Shifting non-borrowing transactions onto debit cards should reduce total consumer debt, reduce the incidences of credit card penalties and fees, and reduce the number of families struggling with unmanageable credit card debt. If improved protections for debit card transactions were enacted into law and these changes were well-publicized, this change could help encourage older Americans to adopt debit cards for their routine spending.

Vulnerability to Credit Card Solicitations

Many Americans feel overwhelmed with the frequency and aggression of credit card solicitations.[49] Older consumers may be particularly vulnerable to the marketing practices of credit card companies. Because many older Americans are retired or work part-time, they confront many more telemarketing offers from credit card companies than younger Americans. Additionally, older Americans may suffer from health issues that limit their mobility or decrease their social networks. Such increasing isolation ratchets up the opportunity for telemarketers to persuade older Americans to accept new credit cards. For some seniors, hearing loss or declining mental acuity may hamper their ability to decipher the terms of oral offers.

For many of the same reasons, older Americans may be less able to manage the onslaught of written credit card solicitations that the industry mails.[50] The fine-print disclosures are not easy to read at any age; such information may be completely illegible to many older Americans. Older Americans also may be particularly concerned about the risks of throwing out mail without opening it for fear of missing important correspondence.

The prior section described research showing that elderly families who seek bankruptcy relief are particularly likely to have overwhelming credit card debt. Yet, credit card solicitations are unrelenting—even after families have filed bankruptcy due to high credit card debts. A married woman in her 60s colorfully observed that credit card solicitations after bankruptcy were so frequent they were “coming out of the woodwork.”[51] Over 90 percent of respondents who were interviewed in the Consumer Bankruptcy Project said that creditors had sent them solicitations within the first year after they filed bankruptcy.[52] Older Americans were particularly frustrated and concerned about credit card marketing. A 70 year old consumer recounted being “preapproved more times than you can count” during the first year after her bankruptcy. She explained that “you’d think that I was Donald Trump, the way they would send me credit cards.”[53] One debtor even resorted to sending a “blistering” letter to a credit card issuer to express frustration with the continued solicitations, while most consumers reported that they tried not to open the offers and put them directly in the trash to avoid future credit card problems.

Existing law provides two tools to help older Americans—indeed, all Americans—deal with persistent and overwhelming credit card marketing. First, the do-not-call registry permits families to remove their names from telemarketing lists and reduces the risk of aggressive telephone sales pitches for credit cards.[54] Senior citizens are more likely to have put themselves on the do-not-call list than younger households,[55] and overall participation in the registry is high. Second, the Fair Credit Reporting Act provides a mechanism for eliminating pre-screened written credit offers.[56] Consumers can call or use the Internet to opt-out of such offers.[57] However, only six percent of all consumers with credit records have opted-out.[58] While older households are more likely to opt-out than their younger counterparts, a Federal Reserve study found that just over ten percent of Americans aged 55 -64 years or aged over 65 have opted-out. The vast majority of older Americans have not taken advantage of the opt-out for pre-screened credit solicitations.

The credit solicitation opt-out is infrequently used because few Americans know about this law. A survey commissioned by the Federal Reserve found that less than twenty percent of all consumers had even heard of the opt-out provision.[59] This paltry figure needs to be addressed. Congress passed the opt-out law to help Americans take control of their credit card debt and financial well-being. The current law fails in its purpose because consumers do not know their rights.

Academic research has identified cognitive and behavioral barriers that plague the efficacy of opt-out provisions.[60] A better law would require consumers to opt-in to receiving prescreened credit card solicitations. In effect, the default position is reversed. The presumption would be that unsolicited credit card offers are an unwanted intrusion. Such a law leaves the choice about credit card marketing up to individual Americans, but removes the procedural hurdles that hinder people from affirmatively acting to opt-out. An opt-in presumption also eliminates the need for consumers to disclose their social security number, a requirement of opting-out that deters consumers from taking advantage of the current law. Alternatively, there should be improved outreach efforts about the opt-out law. The Federal Trade Commission should step up its educational efforts, and groups such as AARP should work hard to inform their members about this legal right. Nursing homes, assisted living facilities, and senior centers should educate both older Americans and their family members or caretakers about options to control credit card marketing.

Shielding older Americans—and all families—from the burdens and pressures of credit card solicitations improves their control of their financial well-being. An 89-year old woman who filed bankruptcy in 2001 suggested such a law reform. She told Consumer Bankruptcy Project researchers, “Really, I don’t think that they should be able to send credit cards to people the way that they do. I think that if you want one, you should have to contact them and apply.”[61] Reversing the presumption of the Fair Credit Reporting Act provision on pre-screened credit offers would permit Americans who want credit card offers to still receive them, while removing the potential risks to older Americans who may not be aware of the opt-out process or able to manage such solicitations.

Conclusion

Age does not immunize against credit card harms. In fact, the existing research suggests the opposite effect. Older Americans carry increasing amounts of credit card debt, are more likely to pay credit card fees or make suboptimal credit card decisions, and are more likely to file bankruptcy because of overwhelming credit card debts than younger Americans. Older Americans are particularly vulnerable to the dangers of credit cards. They struggle to understand existing disclosures, are less likely to use debit cards as an alternative to credit cards, and are particularly at risk from aggressive credit card marketing.

Modest amendments to existing laws could address these problems. Congress should require point-of-sale disclosures to prevent credit card mistakes and to improve individuals' awareness of credit card fees and escalating card debts. It should also amend existing laws on consumer protections to boost the attractiveness of debit cards as the primary device for spending transactions and transform the opt-out provision to an opt-in provision to protect families from unwanted credit card solicitations. Such changes could dramatically improve the ability of older Americans to avoid the serious harms that can accompany credit card use and would help Americans of all ages take charge of their financial well-being.

---

[1] Additional biographical information and my curriculum vitae are available at my faculty page at the University of Iowa College of Law at http://www.law.uiowa.edu/faculty/katie-porter.php.
[2] My research papers may be downloaded from my SSRN author page at http://ssrn.com/author=509479.
[3] Christine Dugas, *Debt Smothers America's Youth*, USA TODAY, Feb. 2, 2001, *available at* http://www.usatoday.com/news/nation/2001/02/2001-02-12-young-debt.htm; Ben Woolsey, *Gen P: The Plastic Generation*, Jan. 21, 2005.
[4] *Heather C. McGhee & Tamara Draut, Retiring in the Red: The Growth of Debt Among Older Americans, Demos Briefing Paper,* at 2, *available at http://www.demos-usa.org/pubs/Retiring_In_The_Red_WEB.pdf.*
[5] Id. at Fig 1.
[6] Id.
[7] 2004 Survey of Consumer Finances Chartbook, Percent of families with credit card balances, by age of head, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[8] McGhee & Draut, *Retiring in Red*, Fig. 2.
[9] Mean value of credit card balances for families with holdings, by age of head, 2004 Survey of Consumer Finances Chartbook, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[10] Median value of credit card balances for families with holdings, by age of head, 2004 Survey of Consumer Finances Chartbook, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[11] Credit Card Practices: Current Consumer and Regulatory Issues, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Consumer Credit Hearing, 110th Cong. (April 26, 2007) (statement of Oliver Ireland) ([T]he flexibility and features that support the benefits of credit cards also result in credit cards being inherently complex products.")
[12] Sumit Agarwal, John Driscoll, Xavier Gabaix, & David Laibson, *The Age of Reason: Financial Decisions Over the Lifecycle* (Mar. 15, 2007), *available at* http://ssrn.com/abstract=973790.
[13] Id. at p. 26, Fig. 14.
[14] Id. at 27-28, Fig. 15.
[15] Id. at 30, Fig. 16.
[16] Consumer Bankruptcy Project III received funding from the Robert Wood Johnson Foundation, The Ford Foundation, Harvard Law School, and New York University Law School. I was the Project Director during the first several months of the study. Teresa Sullivan, Jay Westbrook, David Himmelstein, Robert Lawless, Bruce Markell, Michael Schill, Deborah Thorne, Susan Wachter, Steffie Woolhandler, and John Pottow played key roles in developing the bankruptcy dataset.
[17] Bankruptcy filers are not required to give their ages on bankruptcy court documents, and most people do not disclose their age. To address this information gap, the Consumer Bankruptcy Project gathered original data by administering written surveys to debtors to collect demographic information.
[18] Sullivan, Thorne & Warren, *Old, Young, and In Between* at 2 ("[T]he overwhelming fact that emerges from this study is that most of the activity in the bankruptcy courts comes from middle-aged debtors.")
[19] Id. at 8, Fig. 4.
[20] Id. at 2.
[21] Old, Young, and In Between, at 2-3 ("In ten years, the median age of bankrupt debtors, according to our studies, has risen from 36.5 to 40.6.")

[22] Dr. Teresa Sullivan, Dr. Deborah Thorne, and Prof. Elizabeth Warren plan to reprise their *Old, Young, and In Between* article in the next few months. They will compare the numbers of older Americans in bankruptcy in 2007 with the demographic data from 1991 and 2001, providing a longitudinal picture of the age demographics of bankruptcy debtors.
[23] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors*, American Bankruptcy Institute Law Journal, April 2002, *available at* http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/abi_042002.htm.
[24] Sullivan, Thorne & Warren, *Old, Young, and In Between* at 4, Tbl. 1.
[25] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors*. ("The major distinguishing characteristic of the elderly debtors was their large bank credit card debt.")
[26] The median bankruptcy filer had $10,587 of bank credit card debt and $1,035 in store credit card debt. *See* id.
[27] Ed Flynn & Gordon Bermant, *Credit Card Debt in Chapter 7 Cases,* American Bankruptcy Institute Law Journal, December 2003, *available at* http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/abi_1203.html.
[28] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors.*
[29] Pamela Yip, *Bankruptcy Could Grow Less Affordable*, DALLAS MORNING NEWS, July 24, 2006, *available at* http://www.dallasnews.com/sharedcontent/dws/bus/columnists/pyip/stories/DN-moneytalk_24bus.ART.State.Edition1.159e95c.html.
[30] Among Chapter 7 bankruptcy debtors age 70 and older who filed between 1998 and 2000, the median income was $1,450. During the same period, the median Chapter 7 debtor earned $2,028. *See* Ed Flynn, et al, *A Closer Look at Elderly Chapter 7 Debtors*.
[31] Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, The Fragile Middle Class, 172-198 (2000).
[32] Respondent CA-07-147, Consumer Bankruptcy Project III data (on file with author).
[33] Respondent PA-07-004, Consumer Bankruptcy Project III data (on file with author).
[34] Respondent IL-07-010, Consumer Bankruptcy Project III data (on file with author).
[35] Respondent PA-07-121, Consumer Bankruptcy Project III data (on file with author).
[36] The primary researchers in the Consumer Bankruptcy Project IV are Dr. David Himmelstein, Prof. Melissa Jacoby, Prof. Robert Lawless, Angie Littwin, Prof. Katie Porter, Prof. John Pottow, Dr. Steffie Woolhandler, Dr. Teresa Sullivan, Dr. Deborah Thorne, and Prof. Elizabeth Warren.
[37] Ronald Mann, Charging Ahead 160 (2006).
[38] Truth in Lending Act, §§ 127 and 143; Regulation Z §§226.5a and 225.5.
[39] Credit Card Practices: Current Consumer and Regulatory Issues, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Consumer Credit, 110th Cong., April 26, 2007 (statement of Edward Yingling, on behalf of the American Bankers Association) ("The banking industry agrees with the GAO that better disclosures are needed.")
[40] Credit Card Accountability Responsibility and Disclosure Act of 2007 (Credit CARD Act of 2007), H.R. 1461, 110th Cong. §§ 201-202 (2007).
[41] Ronald Mann, Charging Ahead 163 (2006).
[42] Id. at 54.
[43] Id. at 66.
[44] Certain debit card practices are also unfriendly to consumers, mimicking the problems of credit cards. This subcommittee recently has heard testimony regarding these practices. Overdraft Protections: Fair Practices for Consumers, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Credit, 110th Cong., July 11, 2007. Any effort to shift credit card spending to debit card spending should consider improved protections for debit card users from penalty fees as part of its strategy.
[45] Somewhat surprisingly, there are no consistent federal data on how many Americans have debit and credit cards. A 2004 Federal Reserve study found that only 52 percent of households had a debit card. Ron Borzekowski, Elizabeth K. Kiser, & Shaista Ahmed, *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response* (April 2006), *available at* http://www.federalreserve.gov/pubs/feds/2006/200616/200616pap.pdf, and most estimates suggest that about three in 4 adult Americans have a credit card. Ronald Mann, Charging Ahead at 98, n. 12.
[46] Ronald Mann, Charging Ahead at 76, 94 at Fig. 9.1.
[47] Borzekowski, et. al, Consumers' Use of Debit Cards at 23, Tbl. 2
[48] Truth in Lending Act, § 170.
[49] Bob Sullivan, *Deluged with credit card mail? Help is coming,* MSNBC (Aug. 8, 2005), *available at* http://www.msnbc.msn.com/id/8827007/.

[50] Consumers received almost eight billion direct mail solicitations for credit cards in 2006. The number of credit card solicitations has climbed significantly in recent years, despite the enactment of the opt-out law in 1996. Carbweb collects annual credit card solicitation data at http://www.cardweb.com/cardtrak/news/2007/february/21a.html.

[51] Respondent PA-07-016, Consumer Bankruptcy Project III data (on file with author).

[52] Katherine Porter, *Bankrupt Profits: The Credit Industry's Business Model for Postbankruptcy Lending* (Aug. 1, 2007), *available at* http://ssrn.com/abstract=1004276.

[53] Respondent CA-07-187, Consumer Bankruptcy Project III data (on file with author).

[54] Information on the do-not-call registry is available here, http://www.ftc.gov/bcp/menus/consumer/phone/dnc.shtm.

[55] Hal Varian et. al., *The Demographics of the Do-Not-Call List*, Jan/Feb 2005, *available at* http://www.ischool.berkeley.edu/~hal/Papers/2005/demographics-of-do-not-call.pdf.

[56] 15 U.S.C. § 1681b(e) (604 of Fair Credit Reporting Act); *see also* Bd. of Governors of Fed. Reserve Sys., *Report to Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance* at 11-12 (Dec. 2004), *available at http://www.federalreserve.gov/boarddocs/rptcongress/ UnsolicitedCreditOffers2004.pdf.*

[57] Consumers may call 1-888-5-OPTOUT (1-888-567-8688) or visit www.optoutprescreen.com.

[58] Bd. of Governors of Fed. Reserve Sys., *Report to the Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance*, at 4, 17 (Dec. 2004), *available at* http://www.federalreserve.gov/boarddocs/rptcongress/UnsolicitedCreditOffers2004.pdf. The Federal Reserve generated the actual opt-out rate based on its review of a nationally-representative sample of 30,000 consumers provided by one of the large credit reporting agencies. Based on a survey that it contracted with the University of Michigan to conduct, the Federal Reserve concludes that the opt-out rate could be somewhat lower at 4 to 5 percent. Id. at 31.

[59] Id. at 31.

[60] Behavioral concepts of self-control, procrastination, and hyperbolic discounting explain why many people tend to inertia, despite rational benefits of certain changes. Such research has influenced law reform proposals on consumer savings, such switching retirement savings programs from opt-in to opt-out schemes. *See* Richard H. Thaler & Shlomo Benartzi, *Save More Tomorrow: Using Behavioral Economics to Increase Employee Saving*, 112 Journal of Political Economy (2004), *available at* http://www.journals.uchicago.edu/JPE/journal/issues/v112nS1/112118/112118.web.pdf.

[61] Respondent CA-07-129. Consumer Bankruptcy Project III (2001).